

EXHIBIT 3

October 14, 2019

Elisa P. McEnroe, Esq.
Morgan, Lewis & Bockius
1701 Market Street
Philadelphia, PA 19103-2921

Re: *Russell et al. v. Educational Commission for Foreign Medical Graduates*,
No. 2:18-cv-05629

Dear Ms. McEnroe,

I was asked to review the case of *Russell et al. v. Educational Commission for Foreign Medical Graduates* (ECFMG) as an expert witness in hospital administration, graduate medical education, organized medical staffs, and credentialing. I was asked to opine on the processes that a foreign medical graduate must go through after ECFMG certification when applying for graduate education (residency and fellowship training) and, subsequent application for membership and privileges at a U.S. hospital.

I am qualified to offer an evaluation of this case due to my extensive experience and training in the subject areas. I have been a practicing surgeon in Southern California since July 1982. From 1982 through 2007, I practiced General and Vascular Surgery in private practice in Palm Springs, California with privileges at Desert Regional Medical Center and Eisenhower Medical Center. During that time, I was also the Medical Director and Managing General Partner of Desert Surgery Center, a multispecialty ambulatory surgery center, from 1988 to 2004. I began consulting in healthcare in 2002. From 2002 to 2007, I worked as a consultant for The Greeley Company. In 2007, I decided to close my private practice and became a Clinical Assistant Professor of Surgery at the University of California, Irvine where I practice and teach residents and medical students one week a month. My remaining time is spent in healthcare consulting. My major areas of interest in consulting are organized medical staffs, quality, peer review, credentialing and

privileging and automated data processing. I have attached my full CV as Appendix A for further details in these areas.

My compensation for these endeavors is outlined on my fee schedule attached as Appendix B.

The documents that I reviewed for these opinions are listed in Appendix C.

A list of all cases in which I testified as an expert at trial or by deposition over the last 4 years is attached as Appendix D.

ECFMG provides a number of services relevant to a foreign medical graduate's (FMG's) pathway into clinical practice in the United States, including primary-source verification of foreign medical school diplomas. ECFMG certification is a screening mechanism for ensuring that an FMG has met certain minimum criteria.

Once the FMG obtains his or her ECFMG certification, he or she will usually be applying for a graduate medical position through the National Residency Match Program (NRMP)/Accreditation Council for Graduate Medical Education (ACGME) process if he/she wants to practice in the U.S. It is a requirement of those programs that an FMG hold an ECFMG certificate to be able to enter the residency process. However, the FMG applicant will also need to complete the NRMP application, obtain interviews at an ACGME-approved institution with a desired residency, and be rated by those institutions for a position match. The NRMP application includes supporting documentation such as Medical Student Performance Evaluation (MSPE), medical school transcript, Letters of Reference, Photograph, USMLE (United States Medical Licensing Examination in 3 parts) transcript and the ECFMG certificate.

During the interview process, the FMG goes through a series of interviews with review of all information in the application (of which the ECFMG certificate is only one item as noted above). These interviews are with multiple faculty typically and are designed to elicit information about the applicant's aspirations, program desires such as research, and ultimate goals. At the same time, the applicant gets to learn about the institution's programs, objectives and residency culture. This enables both sides to make rational rating decisions as most institutions will then rate their applicants while the applicants rate the institutions. These are all

submitted to NRMP, which applies its match algorithms to fill the residency position.

If an FMG is accepted for a residency, he or she is subjected to the ongoing review requirements set up by the ACGME. Each residency institution has to file an annual progression report on each resident with milestone achievements identified. Milestones are developed for each specialty but are based on the Six Core General Competencies and then applied to each level of residency from beginner to most advanced and ready to graduate out of residency. Thus, an annual report for any given resident is a complex report on multiple performance measurements that require judgment and explanation. In addition to these reports by the faculty, most specialties have an annual examination (e.g. ABSITE for surgery, IM-ITE for internal medicine) that is another check on the resident's progress.

All patient care delivered by residents is conducted under ongoing oversight by the faculty which puts the faculty in a position to know the strengths and weaknesses of the resident. Additionally, as an employee of the residency program, each resident is subject to normal employee processes such as payroll, taxes, visas if appropriate, healthcare programs and other conditions and requirements of employment.

If the FMG successfully completes all years of the residency fulfilling all requirements as determined both by ACGME and the institution's faculty, he or she may graduate the residency.¹

Typically, at some point early in the residency, states like Maryland and Virginia require that the resident obtain a state medical license of some variety. This is another application process for which an FMG will need to supply a variety of information, including but certainly not limited to his or her ECFMG certificate. In addition, the state board typically requires information about education, clinical training, disciplinary actions, criminal record, practice impairments and a photograph among other data points. The state medical board or licensing agency

¹ At this point, the FMG may be ready to go out into practice or they may desire additional training through a fellowship. The process for entering a fellowship program is similar to the residency process with an application, interviews and match process. Once fellowship is completed in like manner, the FMG is ready to go out for practice of medicine. Fellowship is not required for all FMGs.

will consider the information, may or may not require interviews, and may or may not require a separate examination before issuing a medical license. Since medical licenses are state based, often times, applicants may need to obtain multiple licenses as their training hospitals may cross state lines.

When specialty training is complete, an FMG clinical graduate will be eligible for specialty board certification. The most recognized and accepted is the boards under the umbrella of the American Board of Medical Specialties (ABMS). Each specialty has its own application process but it tends to mirror similar types of information collected by state medical boards. ECFMG certification status is just one data point among many in such applications. This is evidenced in particular by looking at the American Board of Obstetrics and Gynecology's process in utilizing many sources of data in reaching its decision to grant Board Certification status.

When the graduate resident or fellow is applying for hospital medical staff membership and privileges, they will need to undergo an even more rigorous credentialing process. One part of this credential program will be the checking of the ECFMG certificate status. However, this is but one piece of information checked. Licensure, training, board status, personal references, and any clinical performance data available will also be evaluated. There may be in person interviews as well. The applicant typically will need to provide evidence of malpractice coverage and clinical coverage by other practitioners on staff. The credentials are usually reviewed at multiple levels, starting with the specialty service or department. They then may be reviewed by a Credentials committee as well as a Medical Executive Committee (MEC) for final recommendations. These recommendations are then transmitted by the MEC to the Board or Governing Authority which makes the final decision.

Once the FMG is on staff at a hospital, his or her clinical competence is immediately evaluated through a focused review process commonly known as FPPE (Focused Professional Practice Evaluation). If the FMG practitioner is successful here, they are then evaluated for clinical competence in an Ongoing Profession Practice Evaluation (OPPE) that is carried out more than once a year, typically every 6-8 months in most hospitals.

The FMG will need to renew his or her membership and privileges on regular intervals. The FMG's performance data, malpractice information and any other

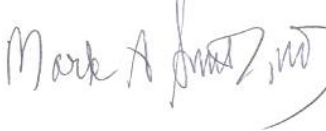
relevant data will be reviewed in a fashion similar to the initial application with the final decision coming from the Governing Board.

Opinions

1. While ACGME residency programs require ECFMG certification for an FMG to be eligible, ECFMG certification is by no means the only or even the significant information point regarding an FMG's ability to practice medicine in the US.
2. Residencies and Fellowships should, and typically do, look for information regarding an FMG's background, character and aspirations, which requires gathering a large amount of data to see if he or she will be a fit for an institution's particular specialty training program. Residencies and Fellowships gather this data from a variety of sources. The ECFMG certificate is just one data point for them to check.
3. Hospitals should, and typically do, check the validity of training, quality of clinical care and goodness of character to see if the applicant matches the hospital's goals and requirements of their physicians when the Hospital is granting initial membership and privileges. Hospitals get this information from a variety of sources. A current ECFMG certificate is but one piece of information available to them.
4. Current clinical competence is a responsibility of the ACGME and institutional faculty during training and of the organized medical staff for hospital practice. Current clinical competence is determined based on an assessment of a wide array of information from a variety of sources. A current ECFMG certificate is only a single point of information in a large sea of performance data.
5. An FMG working as a resident or with privileges at a hospital is subject to normal employee processes such as payroll, taxes, healthcare programs and other conditions and requirements of employment. In connection with those processes, residency programs and hospitals should, and typically do, gather a wide variety of information about the FMG from a variety of sources other than ECFMG.

I reserve the right to add to or modify these opinions if I am given further information to review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark A. Smith". The signature is written in a cursive, somewhat stylized font. The first name "Mark" is clearly legible, followed by "A." and then "Smith". There is a small flourish or underline at the end of the signature.

Mark A. Smith, MD, MBA, FACS

Appendix A

CURRICULUM VITAE

Mark A. Smith, M.D., M.B.A., F.A.C.S., FACHE

Licenses

747 Camino Norte

Palm Springs, CA 92262

Home Telephone- (760) 320-3851

Cell Phone- (760) 275-8204

Email- Vascu@aol.com

PA MD- 025431-E (Inactive)

CA00G47011 (Active)

Board Certification- Gen'l Surg,
Vascular Surgery

American Board of Surgery- 1983

Recertified- 1990, 2004

Certification Vascular Surgery-
November 1984

Recertified- 2013

Fellow of the American College of
Surgeons- October, 1985- Present

Married- Bonnie Heinen Smith

Children- 2 Daughters (Lisa, Lindsay)

Special Certification in Laser Asst
Angioplasty – January 1988

Certified- American Board of
Quality Assurance and Utili-
zation Review

Physicians- July 2005- Dec.2015

Certified- Fellow of the American
College of Healthcare Executive, January
2011

Certified- Graduate Gemologist (GG),
May, 2015

Certified Specialist in Wine (CSW),
August, 2017

Certified Professional Healthcare Quality
Dec. 2017

Education

Haverford Senior High School Havertown, PA	9/66- 6/69 Diploma
University of Michigan Ann Arbor, Michigan	9/69- 8/72 B.S. Zoology
Jefferson Medical College Philadelphia, PA	9/72- 6/76 M.D.
University of Phoenix Phoenix, AR	1/92- 3/94 M.B.A.

Training

Internship

University California San Diego Medical Center 225 W. Dickinson Street San Diego, CA Marshall Orloff, M.D.	7/76- 6/77 Surgery
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Residency

University of Kansas Medical Center 39 th and Rainbow Blvd. Kansas City, KS William Jewell, M.D.	7/77- 6/81 General Surgery
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Fellowship

Hospital of the University of Pennsylvania 34 th and Spruce Streets Philadelphia, PA L. Henry Edmunds, M.D.	7/81- 12/81 Cardiothoracic Surgery
Hospital of the University of Pennsylvania 34 th and Spruce Streets Philadelphia, PA Brooke Roberts, M.D.	1/82- 6/82 Vascular Surgery

Employment

Private Practice- Vascular and General Surgery Coachella Valley Surgical Associates 1100 N. Palm Canyon Drive #208 Palm Springs, CA 92262	7/82- 3/2007
Medical Director and Managing General Partner Desert Surgery Center 1190 N. Palm Canyon Drive Palm Springs, CA 92262	12/88- 8/2004
Senior Consultant Practice Director, Credentialing The Greeley Company 200 Hoods Lane Marblehead, MA 01945	3/2002- 12/2007 1/2008- 6/30/2009
Independent Healthcare Consultant HG HealthCare Consultants, LLC.	7/1/2009- Present
Assistant Professor of Surgery, Division of Vascular Surgery UCI Medical Center 333 City Blvd., Suite 1600 Orange, CA 92868	9/2007- Present
Chief Medical Officer Verisys Corporation 1001 N. Fairfax Street Suite 640 Alexandria, VA 22314	9/2011- 3/2014
Chief Medical Consultant Morrisey Associates, Inc. 222 South Riverside Plaza Suite 1850 Chicago, IL 60606	3/2012- 3/2015

VP & Chief Medical Officer Morrisey Associates, Inc./Morcare 222 South Riverside Plaza Suite 1850 Chicago, IL 60606	3/2015- 12/2015
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VP & Chief Medical Officer Morcare LLC. 222 South Riverside Plaza Suite 1850 Chicago, IL 60606	1/2016- 1/31/2017
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Senior Medical Consultant Morrisey Associates Inc., A Healthstream Company	2/1/2017- 12/31/2017
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Chief Medical Officer Humanus Inc.	1/1/2018- 2/1/2019
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Hospital Appointments

Desert Regional Medical Center 1150 N. Indian Canyon Drive Palm Springs, CA 92262	Active Staff 7/82- 12/2007 Emeritus Staff 1/2008- Present
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Eisenhower Medical Center 39000 Bob Hope Drive Rancho Mirage, CA 92270	Active Staff 9/82- 12/2007
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UCI Medical Center 100 City Drive Orange, CA 92868	Provisional Staff 5/08- 8/09 Active Staff 8/09- Present
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Hospital Positions

President Elect- DRMC	July 1988- June 1990
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President- DRMC	July 1990- June 1992
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Past President- DRMC	July 1992- June 1994
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Chief of Surgery- DRMC	July 1993- June 1995
Chairman, Peer Review Committee	July 2004- Jan, 2007
Medical Director, Cardiac Surgery DRMC	August 2004- September, 2006
Co-Surgeon Champion, NSQIP for University of California Irvine Medical Center, Department of Surgery	August 2010- 2012

Professional Memberships

- American College of Surgeons, Fellow
- American College of Physician Executives, Member
- American College of Healthcare Executives, Fellow
- Southern California Vascular Surgical Society, Member
- National Association of Healthcare Quality, Member
- Society of Vascular Surgery, Active Member

Other Memberships

- Airplane Owner and Pilot's Association
- Experimental Aircraft Association
- American Philatelic Association, Life Member
- Palm Springs Air Museum
- Association Naval Aviators
- United States Tennis Association
- Defense Orientation Conference Association, Member since 1995

Interests

Art Collecting, Reading, Flying, Tennis, Stamp Collecting

Gemology, Sailing, Vintage Cars

Past Associations, Positions

Palm Springs Desert Museum, Member of Board of Directors 1993-95

Desert Surgery Center, General Partner and Medical Director 1987- 2004

Palm Springs Professional Building, General Partner 1988- 1998

Publications

Assessing the Competency of Low Volume Providers, Smith, MA and Pelletier, S, HCPro, 2009

Effective Peer Review, Marder, R and Smith, MA, HCPro, 2005

Effective Peer Review 2nd Edition, Marder, R, Smith, M. and Sheff, R., HCPro, 2007

Proctoring and Focused Professional Practice Evaluation. Marder, R., Smith, MA, and Sagin, T., HCPro, 2006

Proctoring and FPPE, Marder, R and Smith, MA, HCPro, 2009

Measuring Physician Competency, Marder, R, Smith M.A., Smith, M. and Searcy, V., HCPro, 2007

Core Privileges for Physicians, Crimp, W, Pelletier, S., Searcy, V. and Smith, M, HCPro, 2007

The Credentials Committee Manual, Smith, M.A., HCPro, 2016

Effective Peer Review 4th Edition, Marder, R, HCPro, 2017. Contributed chapter on approach to team performance measurement

Optimal Resources for Surgical Quality and Safety, Editors Hoyt, D. and Ko, C., American College of Surgeons, 2017. Contributing Author.

Seminars

Multiple seminars delivered on various topics related to Medical Staff including effective Medical Staff leadership, credentialing and privileging, peer review, surgical team summit, proctoring, physician performance profiles

Redesign of peer review system at approximately 75 hospitals in last fifteen years.

Keynote Speaker for Morrissey Users Conference, August 2010, "Moving from Competence to Excellence ... Improving Patient Safety through Automation"

Faculty, American Association of Physician Leadership (previously American College of Physician Executives) 2011- Present

Member of Faculty Advisory Council, AAPL, August 2015- July, 2019

Faculty, Credentialing Resource Center, April 2017- present

Worked with ECRI on a number of evaluations and presentations under their Patient Safety Organization

Appendix B Compensation

Legal Fee Schedule for Mark A. Smith, MD

Document Review and Letters: \$500/hr

Deposition in my town- \$600/hr

Traveling deposition or Trial Testimony- \$6000/dy + travel expenses

Appendix C- Documents reviewed for these opinions

- 1 Reports and CVs of:
 - a. Williamson, Jerry
 - b. Markenson, David
 - c. Burroughs, Jonathan
 - d. Hyde, John
- 2 Website of the Accreditation Council for Graduate Medical Education-
www.acgme.org
- 3 Website of the National Residency Matching Program (NRMP)-
www.nrmp.org
- 4 Website of the Medical Board of California- www.mbc.ca.gov
- 5 Website of the American Board of Medical Specialties- www.abms.org
- 6 Website of Educational Commission for Foreign Medical Graduates-
www.ecfmg.org
- 7 Records from the American Board of Obstetrics and Gynecology
(ABOG_nonparty_000001-00082)

Appendix D- Cases in Which Dr. Smith has testified or been deposed in the last four years

Toronto v. Jaffurs et. al.- (Paul Plevin is the law firm that I worked with)-
Deposition in May, 2019

Rosenberg Fair Hearing Testimony- (Durham Jones and Pinegar is the law firm I
worked with)- February, 2019